

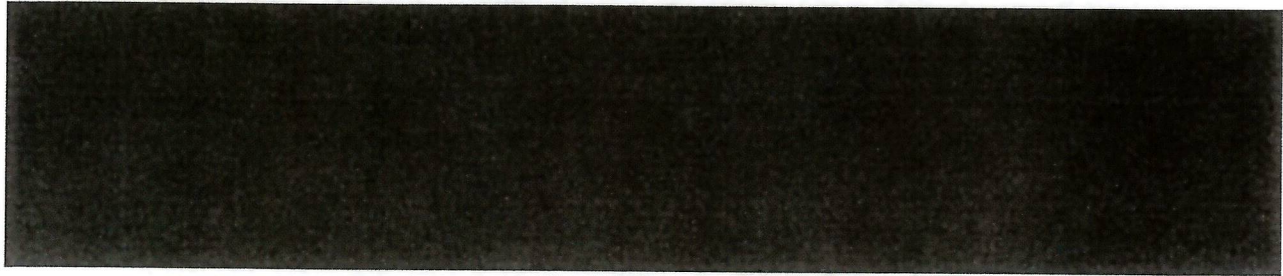
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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

2011 OCT -5 PM 12: 22


LEEANN FLYNN HALL
CLERK OF COURT



**MOTION FOR SECONDARY ORDERS TO CERTAIN
ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS (S)**

THE UNITED STATES OF AMERICA, through the undersigned Department of Justice attorney, respectfully moves this Court, pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (the Act), to issue secondary orders to certain electronic communication service providers concerning DNI/AG 702(g) Certifications

 ~~(S//OC/NF)~~

1. On October 3, 2011, this Court issued a Memorandum Opinion and Order concerning the following matters: (1) the "Government's Ex Parte Submission of Reauthorization Certification and Related Procedures, Ex Parte Submission of Amended Certifications, and Request for an Order Approving Such Certification and Amended Certifications" for DNI/AG 702(g) Certifications 

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Classified by: Lisa O. Monaco, Assistant Attorney General, NSD, DOJ
Reason: 1.4(c)
Declassify on: 5 October 2036

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which was filed on April 20, 2011; [REDACTED]

[REDACTED]

[REDACTED] (S//OC/NF)

2. The Court's Order granted in part and denied in part the Government's request for the Court to approve DNI/AG 702(g) Certification [REDACTED]

[REDACTED] See Order at 2. In particular, the Court found that the certifications contained all of the required elements. See *id.* at 2-3. The Court further found that with respect to one aspect of the proposed collection – the “upstream collection” of Internet transactions containing multiple communications (MCTs) – NSA's minimization procedures, as the government proposes to apply them to MCTs as to which the “active user” is not known to be a tasked selector, do not meet the requirements of the Act with respect to retention. See *id.* at 3. The Court further found that NSA's targeting and minimization procedures, as the government proposes to apply them to MCTs as to which the “active user” is not known to be a tasked selector, are inconsistent with the requirements of the

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Fourth Amendment. See id. Accordingly, the Court ordered, pursuant to 50 U.S.C. § 1881a(i)(3)(B), that the government shall, at its election: (a) not later than 30 days from October 3, 2011, correct the deficiencies identified by the Court; or (b) cease the implementation of the Certifications insofar as they permit the acquisition of MCTs as to which the "active user" is not known to be a tasked selector. See id. at 3-4.

~~(S//OC/NF)~~

3. The Government respectfully requests that the Court issue secondary orders reflecting the above, as described in the Court's Memorandum Opinion and Order of October 3, 2011, to the electronic communications service providers who provide the Government with information, facilities, or assistance necessary to accomplish the acquisition of telephone communications and the "upstream" collection of Internet communications. [REDACTED]

~~(S//OC/NF)~~

Respectfully submitted,

b(6), b(7)(C)

National Security Division
United States Department of Justice

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